92-983

Case No. _____

Supreme Court, U.S.
FILED
DEC 9 1992
OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1992

ROBERT WILSON,

Petitioner,

v.

STATE FARM FIRE AND CASUALTY COMPANY,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

ROBERT WILSON
15630 S. Loomis St.
Harvey, IL 60426
(708) 339-0092
Pro Se

QUESTIONS PRESENTED

WHETHER THE STATE COURT'S AS WELL AS THE FEDERAL COURT'S REFUSAL TO ENFORCE THE PETITIONER'S RIGHT TO FILE A CLAIM WITH HIS INSURER, STATE FARM INSURANCE COMPANY, DEPRIVED THE PETITIONER OF THE GUARANTEE UNDER THE FOURTEENTH AMENDMENT.

WHETHER THE APPELLATE COURT'S ORDER, FIRST JUDICIAL DISTRICT OF ILLINOIS DEPRIVED THE PETITIONER OF EQUAL PROTECTION WITHIN ITS JURISDICTION WHEN IT HELD THAT THE PETITIONER'S PHONE CALL SOMETIME IN NOVEMBER OR DECEMBER 1983 WAS TANTAMOUNT TO A PROOF OF LOSS.

WHETHER THE U.S. DISTRICT COURT JUDGE ACTED PROPERLY IN DISMISSING THE PETITIONER'S FEDERAL QUESTION UNANSWERED; AND WHETHER IT HAD JURISDICTION TO DISMISS ON A MOTION

WHERE THERE IS NO CLAIM AGAINST THE INSURER, STATE FARM INSURANCE CO.

WHETHER THE DISTRICT COURT ACTED PROPERLY WHEN HE ACCUSED THE PETITIONER OF HAVING FILED A CLAIM WITH STATE FARM; AND THAT THE PETITIONER MAY BE SANCTIONED BY THE U.S. COURT OF APPEALS IF AN APPEAL IS PURSUED.

WHETHER THE U.S. COURT OF APPEALS ACTED PROPERLY IN SUMMARILY AFFIRMING THE PETITIONER'S DISMISSAL OF ACTIONS WHEN THE DISTRICT COURT'S ORDER WAS CLEARLY IN DISPUTE.

WHETHER THIS COURT WILL INTERPRET THE VIOLATION OF PETITIONER'S RIGHT UNDER OATH ON A CLAIM WHICH DOES NOT EXIST.

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1992

Case No.

ROBERT WILSON,

Petitioner,

v.

STATE FARM FIRE AND CASUALTY COMPANY,

Respondent.

Petition for Writ of Certiorari to the

United States Court of Appeal for the

Ninth Circuit

Petition for Writ of Certiorari

Petitioner, Robert Wilson, respectfully prays that a Writ of Certiorari issue to review the judgment and orders of the U.S. District Court, as well as the United States Court of

Appeals Order, affirming the District Court's dismissal of the Petitioner's actions. This appeal presents an issue of law involving a denial of the Petitioner's rights, under an insurance policy issued by the Respondent, State Farm Fire and Casualty Company, hereinafter referred to as the Respondent. The Respondent, under an effective insurance policy, continues to refuse to allow the Petitioner the right to file a claim with them for a vandalism loss, irrespective of the fact that the insurance premium entitles the Petitioner to this right. Nevertheless, the State Courts, as have the Federal Courts, have deprived the Petitioner of the benefit of these rights; as a result thereof, violates the Petitioner's basic rights guaranteed under the Fourteenth Amendment to the U.S. Constitution.

ORDERS BELOW

Appendix A to this Petition is the unpublished Order of the U.S. Court of Appeals.

Appendix C to this Petition is the unpublished Order of the U.S. District Court, Northern District of Illinois.

Appendix E to this Petition is the unpublished written Order of the Appellate Court, First Judicial District of Illinois.

JURISDICTION

The U.S. District Court Order was filed on June 25, 1992. A timely Motion for Rehearing was filed on July 14, 1992, and denied August 4, 1992. Notice of Appeal was timely filed on August 20, 1992.

The United States Court of Appeals summarily affirmed the District Court's dismissal of the Petitioner's action on September 30, 1992. Motion to Reconsider was denied on October 16, 1992, and is set forth in Appendix B. This Court's jurisdiction is invoked under Title 28, U.S.C. 1254(1), and Title 28 U.S.C. 1331.

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

Amendment 14 to the United States Constitution is set forth in Appendix K.

STATEMENT OF THE CASE

The United States Court of Appeals for the Seventh Circuit had jurisdiction pursuant to Title 28 U.S.C. 1331, Federal Question. On February 4, 1983, the Petitioner renewed Policy No. 93G-72-9675-1 for a homeowner's policy issued by the Respondent with an effective coverage period of February 4, 1983, and expiration date of February 4, 1984. On June 27, 1983, a tenant of the building, a Vietnam veteran, committed serious damage to the property. To establish the truth of the damage, a report of the loss was delayed until November or December 1983, upon which time the perpetrator pled guilty and was fined and sentenced to six months, under Complaint No. 83-6-005836. On September 20, 1983, without notice, the Appellee canceled Policy No. 93G-72-9675-1, and used the balance of that premium to write Policy No. 93-72-0109-2, with effective coverage of September 20, 1983, and September 20, 1984, on the same property. The Appellee was not aware of the June 27, 1983 loss, nor was the Appellant

aware of the cancellation of policy on September 20, 1983. On January 5, 1984, the adjuster for the Appellee, Mr. (Walter) Churan, sent the Appellant a letter:

> Dear Mr. Wilson,
>
> > After you and I inspected your severely damaged property on Vine Street, I stopped at the State Farm claim office to check for policy coverage. The policy which is in force now was written on September 20, 1983, which was about three months after the loss occurred. A further check through Mr. Bobbe's office shows that the previous policy was canceled on February 7, 1983. This would mean that State Farm did not insure these premises between February and September of 1983. Since there was no coverage on these premises at the time of loss, we must respectfully deny your claim...

On July 6 of 1984, a second adjuster for the Appellee, Mr. Danny Dazler, contacted the Appellant by phone to once again meet at the insured property, that the February 4, 1983 policy had been discovered, and that it would repair the vandalism damage. Two days later, a fire loss occurred on July 8, 1984.

On March 1, 1985, the Appellant was required to submit

to an examination, under oath, by Attorney Albert DeVito relative to the fire loss claim. Upon its conclusion, the Appellee reconsidered the vandalism loss and also required the Appellant to submit to an examination, under oath, conducted by Attorney Frederick J. Sudekum, irrespective of the fact that no sworn statement in proof of loss had been filed with the Appellee for the vandalism loss, as required by the insurance policy. Nine months from the date of examination, on March 5, 1986, the Appellee wrote the Appellant a second letter, denying the reported vandalism loss of June 27, 1983, claiming the policy was not in effect at the time of the loss. Also on March 5, 1986, by means of a separate letter, they denied the Appellant's fire loss claim of July 8, 1984.

On March 3, 1987, the Appellant filed a six-count Complaint for declaratory judgment, to recover damages for two unrelated claims of vandalism and fire loss which took place at 15420 S. Vine St. in Harvey, Illinois, respectively on June 27, 1983 and July 8, 1984. Count I was based upon a

breach of a homeowner's insurance policy issued by the Appellee to the Appellant. Under Policy No. 93G-72-9675-1, with an effective coverage period between February 4, 1983, and February 4, 1984 (RC15). Count III incorporated the allegations of Count I, and sought damages under Section 155 of the Insurance Code (Ill. Rev. Stat. 1987, Ch. 73, Par. 767). Count V also incorporated the allegation of Count I and sought attorneys' fees in bringing this action (RC6).

Count II was brought for a breach of a different policy issued to the Petitioner, with an effective coverage period between September 20, 1983 and September 20, 1984, for a fire loss which took place on the same premises on July 8, 1984 (RC14). Like Counts III and V, Counts IV and VI sought damages under Section 155 of the Insurance Code and attorneys' fees for bringing this action. On May 19, 1988, the Plaintiff filed two motions voluntarily dismissing the fire loss claim. Count II (C254) and Counts IV and VI were dismissed on July 21, 1988, with prejudice. On November 16, 1988, at

the hearing on the Plaintiff's second Motion, Plaintiff requested the Trial Court to issue an Order directing the Defendant to submit a proof of loss form to the Plaintiff, as required by the policy, relative to the vandalism loss, which would allow the Appellant to file a claim with his insurer, State Farm Fire and Casualty Company, in compliance with the Ill. Rev. Stat. 1985, Ch. 73, Par. 755-1, of the Code of Civil Procedure.

The Appellee's Motion requested that the Appellant's Counts I, III and V be dismissed under Section 2-619 of the Code of Civil Procedure on the basis that the Appellant had failed to file his action within one year from the date of loss, in compliance with the policy. The Trial Court denied the Appellant's Motion for the proof of loss as required by the policy and dismissed the Petitioner's action. However, it granted the Respondent's Motion for failure to file suit within one year in compliance with the policy. On November 16, 1988, the Petitioner filed a second Motion for Reconsideration of its dismissal of suit pursuant to Section 2-619, on the basis

that it violated the Ill. Rev. Stat. 1985, Ch. 73, Par. 755-1. The Petitioner contends that the legislature under this statute requires the Petitioner to file a signed sworn statement in proof of loss form with his insurer, the Respondent, that the controlling statute, Section 143-1 of the Illinois Insurance Code, required the same. On January 20, 1989, the Court denied the Motion to Reconsider and Notice of Appeal followed.

On appeal in Illinois Appellate Court, First Judicial District, the Petitioner was no better served with the same argument, unable to base its ruling on rules of law, exerted its power and issued an Order, solely to defeat the Petitioner, and held: We have assumed throughout this opinion in Petitioner's favor, that his report of the loss sometime in November or December 1983 was tantamount to a proof of loss. A timely petition to the Illinois Supreme Court was filed on February 28, 1991, which was denied, as well as a Writ of Certiorari to the United States Supreme Court on the basis that the

Petitioner's search for justice did not follow the rules. On March 12, 1992, the Petitioner presented a federal question to the U.S. District Judge, William T. Hart: Whether these denials of right to file a claim, and whether the State Court's refusal to enforce this right to file a claim, create a conflict with the Fourteenth Amendment which guarantees the Petitioner due process, as well as equal protection under the law.

On June 25, 1992, the District Judge dismissed the Petitioner's action and refused to entertain the federal question, irrespective of the filing fee. Following the right to appeal the dismissal within 30 days, the Court admonished the Petitioner and stated: I also want to tell you, Mr. Wilson, that if the Court of Appeals thinks your appeal is frivolous, they may impose sanctions. Now, you had better take a careful look at my Order and abide accordingly.... Upon this advice, it generated so much fear until the Petitioner had decided to relinquish the Appeal; later, however, determined there to be

more wisdom in continuing to seek justice, than to give up on it. Also, on June 25, 1992, the District Judge rendered a grave injustice upon Petitioner in his Order and held: On June 27, 1983, Plaintiff, Robert Wilson, experienced damage and vandalism loss of property. Plaintiff filed an insurance claim with the Defendant, State Farm Fire and Casualty Company. State Farm investigated the claim and denied payment on the basis that State Farm did not insure the property at the time of loss. The Petitioner viewed this as a new charge. At no time throughout these proceedings — both state and federal — has the Respondent ever accused the Petitioner of having filed a claim. So, the Petitioner filed a Motion with the District Judge for an Order upon the Respondent to furnish the Petitioner with a copy of the alleged claim, which was filed on August 21, 1992. Therein also, requested reconsideration of Order.

On September 8, 1992, the Court denied reconsideration and denied the Motion on the basis that the Petitioner had filed his Notice of Appeal on August 19, 1992, in the Seventh

Circuit Court of Appeals. Also on September 8, 1992, the Petitioner filed a Motion with the U.S. Court of Appeals in search of a copy of the alleged claim. On September 30, 1992, the Appeals Court denied the Motion and summarily affirmed the District Court dismissal, and this Petition for Writ of Certiorari came into being.

REASONS FOR GRANTING THE WRIT

Certiorari should be granted for several reasons: To resolve the conflict between the Courts' judgments and the legislature's intent behind its statute involving the Petitioner's right to file a claim with his insurer, State Farm Fire and Casualty Company; to review the questionable judgments of the Courts' orders, denying your Petitioner within its jurisdiction, equal protection of the law; and to review the U.S. Court of Appeals Order summarily affirming the District Court's dismissal of the Petitioner's actions when the Order clearly shows that the District Court refused to entertain the federal question. The Circuit Court Judge of Illinois dismissal of the

Petitioner's Complaint conflicts with Illinois laws. Section 143-1 of the Insurance Code, and the Ill. Rev. Stat. 1985, Ch. 73, Par. 755-1 of the Code of Civil Procedure provides in pertinent parts: Period of limitation tolled, whenever any policy or contract for insurance****contains a provision limiting the period in which the insured may bring suit, the running of such period is tolled from the date proof of loss is filed, in whatever form as required by the policy, until the claim is denied in whole or in part. Here, the form required by the insurance policy was a (proof of loss, signed and sworn to by the insured, stating the knowledge and belief of the insured as to specified information). Statutes — the primary objective of a Court in construing a statute is to ascertain the intent of the legislature.

It is well settled that statutory language must be given its plan, ordinary meaning. In enforcing statutory provision, Courts are bound by the clear and unambiguous language of the statute itself. People v. Miller (1984), 128 Ill.App.3d 574,

580; People v. Boykin (1983), 94 Ill.2d 138, 141, 445 N.E.2d 1174; Mack v. Seaman (1983), 113 Ill.App.3d 151, 155, 446 N.E.2d 1217; David v. Allstate Ins. Co., 147 Ill.App.3d 581, 498 N.E.2d 246 (1986).

In this matter the Respondent neglected to furnish the Petitioner with a proof of loss. Therefore, no claim exists. It is also interesting, however. Appendix J, a page of the examination under oath, will show that the Petitioner was asked the following question: Q: Do you have a letter making the claim? A: No. I didn't make no claim. I called the adjuster and they sent (Walter) Churan out.... There is no reasonable quarrel to override the inevitable fact that the trial judge had no claim before him to dismiss, and that his denial of the Petitioner's Motion in request of a proof of loss deprived the Petitioner of his basic right to file a claim, in violation of due process of the law. Due process is the legal proceeding in which a person is entitled to protect a person's interest. The Court, Petitioner contends, knowingly deprived the Petitioner

of due process of the law, in violation of the first section of the Fourteenth Amendment guaranteeing due process of the law under the U.S. Constitution. On January 20, 1989, the Circuit Court Judge denied the Motion to Reconsider and Notice of Appeal followed. The Appellate Court of Illinois, First Judicial District, set double standards when it held that the Petitioner's phone call sometime in November or December 1983 reporting the vandalism loss was tantamount to a proof of loss... (Where the language of a statute is plain, there is no need for interpretation; however, where interpretation is required, the Appellate Court will select the construction which leads to a logical result.) People v. Ex Rel. Carson v. Ring (1968), 41 Ill.2d 305, 310; Jones v. Municipal Officer Electoral Board (1983), 112 Ill.App.3d 926, 929, 446 N.E.2d 256; Chicago-Midwest Meat Association v. City of Evanston (1981), 96 Ill.App.3d 966, 969, 422 N.E.2d 205; Re Marriage of Freeman (1985), 106 Ill.2d 290, 297.

It is of reasonable importance to point out that the

Appellate Court's order failed to display the Petitioner relied upon the Ill. Rev. Stat. 1985, Ch. 73, Par. 755-1, in Petitioner's Brief and Argument. There are a host of opinions supporting the inevitable fact that the Appellate Court's Order, beyond a doubt, deprived the Petitioner of equal protection of the law within its jurisdiction, guaranteed under the Fourteenth Amendment to the U.S. Constitution. When we direct our attention to the U.S. District Judge William T. Hart, and his ethical conduct, this Honorable Court is more capable than the Petitioner of judging a judge, who sets out to defeat his Plaintiff. His Order, claiming the Petitioner filed a claim with the Respondent is so injurious, it all out defeats the Petitioner's meritorious cause of actions. At this point, the Petitioner paused to ask whether this Honorable Court is going to allow the Petitioner to be treated in this way. If not, this Court will not accept the Circuit Court's dismissal on the basis that the Petitioner did not file suit within one year as required by the insurance policy, for reasons that the Respondent's own

adjuster, Mr. Danny Dazler, called the Petitioner back to the premises to acknowledge the vandalism loss, and committed the Petitioner to believe that suit would not be necessary, that the damage would be repaired. Then, dragged this process into January 5, 1986, now claiming suit was not timely filed. This within itself conflicts with the due process clause. These Orders, dismissing the Petitioner's actions, are clearly and convincingly erroneous, and should not be allowed to stand. Not only that, before this Honorable Court is a jurisdictional issue: whether the District Judge had jurisdiction to dismiss on a Motion where there is no claim lodged against the Respondent. Mindful, however, the Petitioner merely raised a federal question. Such a Motion, it appears, is asking the Court to dismiss the federal question, in which the Court did. As to the matter of the District Judge admonishing the Petitioner of the danger of being sanctioned if an appeal is pursued, is another matter for this Court to ponder. In this final conflict, the U.S. Court of Appeals Summary affirming

the District Court's Dismissal of the Petitioner's actions was only an extension of judicial abuse of power.

Attached to that Motion for a copy of the alleged claim was also a page taken from the examination under oath, which clearly conflicts with the District Court's Order of having filed a claim. This, in and of itself, was sufficient to warrant a full review, which is what the District Court advised the Petitioner of. Under these circumstances, the Court of Appeals Summary affirmed the dismissal of Petitioner's actions solely upon the District Court's Order which is unquestionably erroneous.

WHEREFORE, this Court should grant Certiorari here to explicitly rule on these issues of law, and to resolve the conflict between the Court's Orders and the Ill. Rev. Stat. 1985, Ch. 73, Par. 755.1, and Section 143.1 of the Insurance Code in this matter.

CONCLUSION

For the reasons set forth above a Writ of Certiorari should issue and, in the final analysis, reverse the Orders

denying your Petitioner his right to file a claim, and issue an order directing the Respondent to immediately furnish the Petitioner with a sworn statement in proof of loss form in compliance with the insurance policy.

Respectfully submitted,

ROBERT WILSON
15630 S. Loomis St.
Harvey, IL 60426

Dated: November , 1992

This Honorable Court should also take note that the Respondent as well is guilty of violation of the Petitioner's basic rights, in subjecting the Petitioner to incarceration, under oath, on a claim which does not exist, and being fully aware of the perpetrator's guilty plea in this matter.

APPENDIX

APPENDIX A

ORDER OF THE CIRCUIT COURT DISMISSAL

UNITED STATES COURT OF APPEALS mb

For the Seventh Circuit
Chicago, Illinois 60604

September 30, 1992

Before

Hon. RICHARD D. CUDAHY, *Circuit Judge*

Hon. RICHARD A. POSNER, *Circuit Judge*

Hon. JOEL M. FLAUM, *Circuit Judge*

Robert Wilson, Plaintiff-Appellant, No. 92-2977 v. State Farm Fire and Casualty Company, Defendant-Appellee.	]]]]]]]]]]]	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division. No. 92 C 1770 William T. Hart, Judge.

This matter comes before the court for its consideration of the "MOTION FOR COPY OF CLAIM" filed herein on September 8, 1992, by the pro se appellant. On consideration

thereof,

IT IS ORDERED that the motion is DENIED and the order of the district court dismissing appellant's claim is summarily AFFIRMED.

APPENDIX B

UNITED STATES COURT OF APPEALS rm

For the Seventh Circuit
Chicago, Illinois 60604

October 16, 1992

Before

Hon. RICHARD D. CUDAHY, *Circuit Judge*

Hon. RICHARD A. POSNER, *Circuit Judge*

Hon. JOEL M. FLAUM, *Circuit Judge*

Robert Wilson, Plaintiff-Appellant, No. 92-2977 v. State Farm Fire and Casualty Company, Defendant-Appellee.	]]]]]]]]]]	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division. No. 92 C 1770 William T. Hart, Judge.

This matter comes before the court for its consideration of the MOTION FOR RECONSIDERATION OF ORDER DENYING APPELLANT'S MOTION FOR A COPY OF CLAIM filed herein on 10/7/92, by pro se appellant. On

consideration thereof,

IT IS ORDERED that said motion is DENIED.

APPENDIX C

ORDER OF DISTRICT COURT DISMISSAL

On June 27, 1983, plaintiff Robert Wilson experienced damage and vandalism loss of property. Plaintiff filed an insurance claim with defendant State Farm Fire and Casualty Company ("State Farm"). State Farm investigated plaintiff's claim and denied payment on the basis that State Farm did not insure the property at the time of loss. Almost four years after the loss occurred, on March 3, 1987, plaintiff filed a six-count complaint in the Circuit Court of Cook County, Illinois against State Farm. Plaintiff's suit was dismissed with prejudice in a final order of the circuit court on the basis that plaintiff had failed to file his action within one year from the date of loss in compliance with policy conditions. Wilson v. State Farm Fire & Cas., No. 87 CH 2006 (Cir. Ct. Nov. 16, 1988), aff'd, No. 1-89-0287 (1st Dist. May 23, 1990). The Illinois Supreme Court denied plaintiff's petition for leave to appeal, Wilson v. State Farm Fire & Cas., No. 71136 (Feb. 6, 1991), and the

Supreme Court of the United States denied plaintiff's petition for certiorari. Wilson v. State Farm Fire & Cas., No. 91-123 (Oct. 7, 1991).

On March 12, 1992, plaintiff filed this suit alleging violation of his constitutional right to due process and equal protection pursuant to the Fourteenth Amendment. State Farm now moves to dismiss. Plaintiff complains that he was denied due process of law and equal protection because the circuit court barred him from filing a claim. However, plaintiff was barred by the legally applicable policy condition, not by the circuit court. See Wilson v. State Farm Fire & Cas., No. 1-89-0287 (1st Dist. May 23, 1990). Plaintiff has not set forth any valid constitutional claim for denial of due process or equal protection. He filed a claim; State Farm denied it; he sued and appealed that denial in state court; and he filed this lawsuit. The state court proceedings, including the appellate court opinion affirming the dismissal of plaintiff's case, afforded plaintiff due process and equal protection of the laws.

IT IS THEREFORE ORDERED that the motion of defendant State Farm Fire and Casualty Company to dismiss plaintiff's complaint is granted. The Clerk of the Court is directed to enter judgment against plaintiff Robert Wilson and in favor of defendant State Farm Fire and Casualty Company dismissing this case with prejudice and awarding costs to defendant.

ENTER:

UNITED STATES DISTRICT JUDGE

Dated: June 25, 1992

APPENDIX D

ORDER OF DISTRICT COURT DENIAL OF RECONSIDERATION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

H. Stuart Cunningham
CLERK

Office of the Clerk

Frederick John Sudekum III
Querrey & Harrow, Ltd.
135 South LaSalle Street
Suite 3600
Chicago, IL 60603

Case Number: 1:92-cv-01770

Title: Wilson v. St Farm Fire

Assigned Judge: Honorable William T. Hart

MINUTE ORDER of 8/3/92 by Hon. William T. Hart :

Plaintiff's motion to reconsider is denied. [17-1]

Plaintiff informed of his right to file a timely notice of appeal.

Mailed notice

This order was entered on the docket by the Clerk August 4, 1992

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure. It was generated by the automated docketing system being introduced to handle the civil dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

APPENDIX E

THIRD DIVISION
May 23, 1990

Notice
The text of this order may be changed or corrected prior to the time for filing of a Petition for Rehearing or the disposition of the same.

No. 1-89-0287

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ROBERT WILSON,	)	Appeal from the
	)	Circuit Court
	)	Circuit Court of
	)	Cook County.
Plaintiff-Appellant,	)	
v.	)	No. 87 CH 2006
STATE FARM FIRE AND CASUALTY COMPANY	)	Honorable
	)	Harold A. Siegan,
Defendant-Appellee.	)	Judge Presiding.

ORDER

Plaintiff, Robert F. Wilson, commenced

a declaratory judgment action against defendant, State Farm Fire and Casualty Company ("State Farm"), to determine whether State Farm was obligated, under two consecutively issued homeowner's policies, to indemnify plaintiff because of two separate property losses.

Plaintiff filed a six-count complaint which alleged in Count I that State Farm inproperly denied plaintiff's claim for vandalism to property located at 15420 Vine Avenue in Harvey, Illinois, which occurred on June 27, 1983. Count II alleged that State Farm improperly denied plaintiff's claim for fire loss to the same property which occurred July 8, 1984. Counts III and V incorporated Count I and sought damages under section 155 of the Insurance Code and attorney fees. (Ill. Rev. Stat. 1987, ch. 73. par. 767.) Counts IV and VI incorporated Count II and also

sought damages under section 155 of the Insurance Code and attorney fees. (Ill. Rev. Stat. 1987, ch. 73, par. 767.)

Eventually, Counts II, IV, and VI were dismissed. State Farm then filed a motion to dismiss Counts I, III, and V pursuant to Section 2-619 of the Code of Civil Procedure on the basis that the plaintiff had failed to file his action within one year from the date of loss in compliance with policy conditions. (Ill. Rev. Stat. 1987, ch. 110, par. 2-619.) The trial court granted State Farm's motion and dismissed Counts I, III, and V. Plaintiff appeals.

According to plaintiff, on February 4, 1983, he paid a premium of $163 to State Farm for a homeowner's policy, 93G769275-1, with an effective date of February 7, 1983, and expiration date of February 7,

1984, to insure property located at 15420 Vine Avenue. On June 27, 1983, a tenant vandalized the property. According to both plaintiff and State Farm, on September 20, 1983, State Farm issued homeowner's policy, 92-72-0109-2, with expiration date, September 20, 1984, to insure the same property.

Sometime in November or December, 1983, plaintiff reported the vandalism loss to State Farm by telephoning its offices. Adjuster Walter A. Churon denied this claim by letter dated January 5, 1984, on the basis that State Farm's records indicated that it did not insure the property at the time of loss.

On July 8, 1984, the premises were either damaged or totally destroyed by fire. Sometime between January, 1985, and March 1, 1985, plaintiff submitted a proof of loss

relative to the fire loss which specified that the date of loss, however, was June 27, 1983. The proof of loss also indicated that claim was being made under policy, 92-72-0109-2.

On March 1, 1985, and on December 6, 1985, plaintiff submitted to an examination under oath conducted by State Farm's attorney, Albert DeVito. DeVito told plaintiff that the examination would be pursuant to the terms and conditions of policy 93-720109-2, and that plaintiff would be questioned regarding the fire loss which occurred July 8, 1984. During the course of the examination, plaintiff was also questioned about the vandalism loss with respect to the extent of damage, repairs done afterwards, whether photos were taken, when the property was boarded up, whether he had talked to State Farm representatives about

the loss, and when he had made the claim for the loss. Plaintiff was also asked whether the date of loss, June 27, 1983, which appeared on the proof of loss, was correct. Plaintiff admitted that the date was incorrect, but said that he wrote that date because he was making claim for all subsequent damage, including the fire. Plaintiff believed that his property experienced damage after the vandalism loss because of State Farm's failure to pay that initial claim. On several occasions during the examination, DeVito advised plaintiff that State Farm's position denying the vandalism claim remained unchanged. DeVito specifically asked plaintiff whether he understood that fact or had received any correspondence from State Farm indicating that the claim was being reconsidered. Plaintiff responded that he had not received

any correspondence saying that the claim was being reconsidered, but that he might have his attorney continue to press the vandalism claim. Plaintiff also testified that subsequent to receiving State Farm's letter of denial dated January 5, 1984, a policy covering the vandalism loss period was discovered, and he was told by a State Farm claims person, "Mr. Danzler," about June or July, 1984, that State Farm would pay the vandalism claim. Plaintiff said that no third party was present when Mr. Danzler made this representation.

State Farm denied plaintiff's claim for the fire loss of July 8, 1984, by letter dated March 5, 1986. Also on March 5, 1986, by means of a separate letter, State Farm again denied plaintiff's claim for the June 27, 1983, vandalism loss on the basis that no policy had been in effect which covered

the date of loss. Alternatively, State Farm denied the claim because of late notice, fraud, misrepresentation and failure to mitigate damages.

Plaintiff commenced this action on March 3, 1987. State Farm moved to dismiss Counts I, III, and V on the basis that plaintiff failed to file suit within the one-year limitations period specified within the policy which was further limited by section 143.1 of the Ins. Code. Ill. Rev. Stat. 1985, ch. 73, par. 755.1.

The State Farm policy provides in pertinent part:

"SECTION I - CONDITIONS"

* * *

8. Suit Against Us. No action shall be brought unless there has been compliance with the policy provisions

and the action is started within one year after the occurrence causing loss or damage."

Section 143.1 of the Insurance Code provides in pertinent part:

"Periods of Limitation Tolled. Whenever any policy or contract for insurance, *** contains a provision limiting the period in which the insured may bring suit, the running of such period is tolled from the date proof of loss is filed, in whatever form as required by the policy, until the claim is denied in whole or in part." (Ill. Rev. Stat. 1985, ch. 73, par. 755.1.)

The trial court ruled in favor of State Farm and dismissed Counts I, III, and V. For reasons which follow, we affirm.

Plaintiff initially contends that dismissal was improper because an issue of

fact existed as to the parameters of the one-year limitations period. Plaintiff argues that his vandalism claim was denied on March 5, 1986, rather than on January 5, 1984, as State Farm contends.

It has been well established in Illinois that the contractual period of limitations found in similar insurance policies runs from the date of loss, and not from the time the loss becomes payable or from the date the claim is denied. (Florsheim v. Travelers Indemnity Co. (1979), 75 Ill. App. 3d 298, 308, 393 N.E. 2d 1223; Davis v. Allstate Insurance Co. (1986), 147 Ill. App. 3d 581, 583-4, 498 N.E.2d 246.) Section 143.1 of the Insurance Code only provides that filing of the proof of loss tolls the contractual limitations period until the date the claim is denied in whole or in part. (Kondonrajian v. Millers National Ins. Co. (1987), 151

Ill. App. 3d 870, 872, 503 N.E.2d 775; Vole v. Atlanta International Ins. Co. (1988), 172 Ill. App. 3d 480, 482-3, 526 N.E.2d 653.) In order to toll the one-year contractual limitations period the proof of loss must be in the form required by the policy. (Vole v. Atlanta International Ins. Co., 172 Ill. App.3d 482-3.) Furthermore, and insured cannot rely upon the tolling provision his contractual right to file suit lapses before he submits any proof of loss. Wilson v. Indiana Insurance Co. (1986), 150 Ill. App. 3d 669, 672-73, 502 N.E.2d 69.

In the present case, plaintiff admitted that he reported the loss to State Farm four or five months after the loss, in either November or December, 1983. Even assuming that plaintiff's report of the claim at this time could suffice as a proof of loss to toll the limitations period until the claim

was denied on either January 5, 1984, or March 5, 1986, plaintiff's suit was not timely filed. If one assumes January 5, 1984, as the appropriate date of denial, plaintiff had, at most, until approximately September 5, 1984 to file suit; if one assumes March 5, 1986, as the date of denial, plaintiff had until approximately November 5, 1986. Assuming either date as the appropriate date of denial yields the same result. Plaintiff filed suit after the one-year limitations period expired, even assuming that he can properly claim a tolling of the limitations period.

Alternatively, if one assumes that the proof of loss submitted by plaintiff sometime between January, 1985, and March 1, 1985, relates to the vandalism claim rather than to the fire loss claim, the limitations period lapsed one year from the

date of loss, June 27, 1984, without ever being tolled. See Wilson v. Indiana Ins. Co., 150 Ill. App. 3d at 672-73.

Yet, it can hardly be argued that the January 5, 1984, letter was not a letter of denial. This letter explicitly denied plaintiff's claim for the vandalism loss by explaining that no policy was found which provided coverage during the time of loss. The March 5, 1986, letter reiterated this basis for denial and stated, in the alternative, that the claim was denied because other policy conditions were breached.

While a motion to dismiss pursuant to section 2-619 of the Code of Civil Procedure contemplates that issues of fact will be resolved at trial, easily proven issues of fact can be decided by the court in granting the motion. (Kinney v. Continental (1976),

42 Ill. App. 3d 263, 264-5, 356 N.E.2d 131.) Accordingly, we believe the issue of when plaintiff's claim was denied was appropriately decided by the trial court.

Secondly, plaintiff argues that State Farm has waived or is estopped from asserting a limitations defense because of its conduct in handling the claims. Preliminarily, State Farm counters that since plaintiff did not initially plead that he had complied with all conditions of the policy and, also did not plead facts to invoke either the waiver or estoppel doctrine, he cannot rely upon that argument now. However, any objection that State Farm may have that the matter was not in issue is waived because State Farm did not object when plaintiff raised a waiver and estoppel argument in response to State Farm's motion to dismiss. Florsheim v. Travelers

Indemnity Co., 75 Ill. App. 3d No. 1-89-0287 at 303.

A waiver is an intentional relinquishment of a known right. To constitute a waiver, the words or conduct of the insurer must have been inconsistent with its intention to rely on the requirements of the policy. Florsheim v. Travelers Indemity Co., 75 Ill. App. 3d at 304; Lake in the Hills v. Ill. Emasco Ins. Co. (1987), 153 Ill. App. 3d 815, 817, 506 N.E. 2d 681.

To establish an estoppel, the insured must show that it was in some way misled by the acts or statements of the insurer or its agents; that the insurer relied on this conduct or representation; that such reliance was reasonable; and that the insured was prejudiced thereby. (Florsheim v. Travelers Indemnity Co., 75 Ill. App. 3d at 304-05.) Evidence of conduct by the

insurer which induces plaintiff to reasonably believe his claim will be settled without suit or lulls plaintiff into a false sense of security which causes him to delay the assertion of his rights creates, for the trier of fact, an issue as to whether the conduct constitutes an estoppel. (Myers v. Centralia Cartage Co. (1981), 94 Ill. App. 3d 1139, 1143, 419 N.E.2d 465.) If there is no evidence of such conduct, the court may dispose of the motion to dismiss for untimely filing as a matter of law. In determining the decision to render on the motion, the court looks to the pleadings, affidavits, or other proofs presented by the parties. (Myers v. Centralia Cartage Co., 94 Ill. App. 3d 1143.) Cases in which an insurer's conduct is found to amount to an estoppel typically involve a concession of liability by the insurer. (Myers v.

Centralia Cartage Co., 94 Ill. App. 3d at 1143; Hurtt v. Davidson (1980), 84 Ill. App. 3d 681, 683, 406 N.E.2d 90.) Ordinarily, acts and conduct occurring after the expiration of the time period for bringing suit cannot be relied upon to create an estoppel. Florsheim v. Travelers Indemnity Co., 75 Ill. App. 3d at 307.

Plaintiff contends that because State Farm denied the vandalism claim for the second time on March 5, 1986, and requested that he submit to examination on March 1, 1985, and December 6, 1985, State Farm has waived and is estopped from relying upon the limitations period. Although it is not clear from plaintiff's brief, apparently he is arguing that because this conduct occurred after the limitations period expired these acts and are therefore inconsistent with an assertion of that

defense. However, we believe that State Farm's second denial letter rather than indicating that State Farm did not intend to rely upon the limitations defense, was an attempt by State Farm to reiterate and strengthen its position in response to plaintiff who had stated during examination that he did not intend to relinquish the claim. Additionally, State Farm prefaced that examination with a statement that the examination would pertain to the fire loss claim, and although plaintiff was questioned about some aspects of the vandalism claim which might serve to differentiate or segregate the two losses, the greater part of the examination concerned the fire loss and plaintiff's ownership of the property. Even if plaintiff's examination had totally concerned the vandalism claim, we fail to see how that conduct would indicate that

State Farm did not intend to assert the limitations provision. To adopt plaintiff's view would mean that an insurer could not bolster its other defenses after a suit filing limitations period expired without waiving any limitations defense.

With respect to plaintiff's estoppel argument, since he contends that State Farm's conduct occurred after the expiration of the limitations period, it is difficult to ssee how that conduct could have lulled plaintiff into a false sense of security so that he did not timely file suit. If we assume, however, as plaintiff elsewhere contends, that the claim was denied on March 5, 1986, rather than on January 5, 1986, State Farm's conduct occurred before expiration of the limitations period. Unfortunately, plaintiff is no better served by this position because State Farm's

attorney made it abundantly clear during plaintiff's examination, and the March 5, 1986 denial letter unequivocally demonstrated that State Farm continued to stand upon its earlier denial. Rather than give plaintiff the impression that the matter could be resolved without suit, State Farm's conduct should have advised plaintiff that suit was then probably the only possible means of resolving the claim. Even if we consider plaintiff's statement during his examination that an effective policy was discovered and a State Farm representative told him in June or July, 1984, that State Farm would pay the loss, the result is the same. Since plaintiff alleged that this conversation took place prior to either the examination or the second denial, it should have been clear to plaintiff in the spring of 1986, that State Farm's position was

directly at odds with his own, and that such a firm position without further indication would not likely be reconsidered again. Even where the defendant has engaged in settlement negotiations, which the insurer did not do here, no estoppel has been found, as a matter of law, where negotiations were broken off and liability denied two or three months before the limtiations period expired. Reat v. Illinois Central Railroad Co. (1964), 46 Ill. App. 2d 267, 274-5, 197 N.E.2d 860; Florsheim v. Travelers Indemnity Co., 75 Ill. App. 3d at 305.

Plaintiff also contends that State Farm may not rely upon the limitations provision because State Farm did not provide him with the proof of loss form which was necessary to toll the limitations period. Additionally, plaintiff contends that without that necessary form, a claim has not

been made so as to trigger any limitations period. Unfortunately, plaintiff's argument cannot withstand scrutiny. We have assumed throughout this opinion, in plaintiff's favor, that his report of the loss in either November or December 1983, was tantamount to a proof of loss, and under either view of when the claim was denied, the limitations period expired before plaintiff filed suit. Further, as we have previously stated, the accepted view in Illinois is that the date of loss triggers the one year limitations period, rather than the filing of the proof of loss. Davis v. Allstate, 147 Ill. App. 3d at 583-84.

Plaintiff's final argument is an appeal to general equitable considerations. Plaintiff argues that the one-year limitations period was an insufficient period of time for him to raise funds to obtain legal

representation. Plaintiff urges that we recognize a two-year limitations period in his case so that the merits of his claim might be considered. However, a one-year limitations period in a homeowners's policy has been found not to be against public policy. (McMahon v. Millers National Ins. Co. (1971), 131 Ill. App. 2d 339, 266 N.E.2d 714.) Furthermore, a limitations period is enforceable even though the claim is meritorious and the insurer should have paid it. German v. Continental Casualty Co. (1978), 58 Ill. App. 3d 22, 373 N.E.2d 1058.

Plaintiff is the owner of multiple properties and has testified that he has pursued at least one other action related thereto. He also testified that he was not in debt at the time of his examination except for attorney fees. An attorney that had represented him on other matters argued

in his behalf in response to State Farm's motion to dismiss. Surely, plaintiff could have managed his finances and enlisted the assistance of counsel with whom he was familiar to simply file the suit.

Accordingly, we affirm the judgment of the ciruit court.

Affirmed.

FREEMAN, J., with CERDA, P.J. and RIZZI, J., concurring.

APPENDIX E

ORDER CCG-2

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

ROBERT WILSON	)	
	)	
	)	NO. 87 CH 2006
vs.	)	
	)	
STATE FARM FIRE &	)	
	)	
CASUALTY CO.	)	

ORDER

This cause coming to be heard on defendant's motion to amend the first four 0ages of its July 25, 1988 Section 2-619 Motion to Dismiss Counts I, III, and IV of the plaintiff's Complaint, and defendant's Section 2-619 Motion to Dismiss Counts I, III, & V of the Complaint, the plaintiff having filed a written response and being represented in oral argument by counsel, and the defendant, having filed a reply to plaintiff's response, oral argument having

been made by plaintiff and defendant;

IT IS HEREBY ORDERED:

1) That Defendant's Motion To Amend the first four pages of its motion is granted.

2) That Defendant's Motion to Dismiss Counts, I, III and V is sustained with prejudice.

3) The Court hereby finds that the dismissal of Counts I, III & V is a final order, there being no just reason to retry its enforcement or action pursuant to Rule 304.

Atty. No. 90663
Name Querry & Harrow Ltd.
Attorney for Defendant
Address 135 S. LaSalle
City Chicago
Telephone 236-9850

Nov. 16, 1983

ENTER:

Judge H. Siegan 743

CLERK OF THE CIRCUIT COURT OF COOK COUNTY

APPENDIX G

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

ROBERT WILSON	]	
v. plaintiff	]	
	]	
STATE FARM FIRE &	]	No. 87 CH. 2006
CASUALTY CO.	]	
defendant	]	

NOTICE OF MOTION

To: QUERREY & HARROW LTD.
135 S. LaSalle St.
Chicago, IL 60426

On June 21, 1988, at 10 a.m., or as soon thereafter as counsel may be heard, I shall appear before the Honorable Judge Siegan or any judge sitting in his stead, in the courtroom usually occupied by him in Richard J. Daley Center, Chicago, Illinois, and then and there request that an order be issued directing the defendant to submit a proof of loss to the plaintiff as required by the policy.

2. G

Name Robert Wilson Attorney for

Address 15630 S. Loomis
Harvey, IL

City

Atty No.

Telephone 333-6428

Copy received _____, 19___, at _____m.

PROOF OF SERVICE BY DELIVERY

I, Robert Wilson, the attorney, certify: On May 19th, 1988, I served this notice by delivering a copy personally to each person to whom it is directed:

Querry, Harrow, Gulantic

135 S. LaSalle St., Chicago, IL

Signed and sworn to before me

_____, 19 .

_____Notary Public

MORGAN M. FINLEY, CLERK OF THE CIRCUIT COURT OF COOK COUNTY

APPENDIX H

TRANSCRIPT OF DISTRICT COURT DISMISSAL

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ROBERT WILSON	)	
	)	
Plaintiff,	)	
	)	92 C 1770
v.	)	
	)	Chicago, Illinois
STATE FARM FIRE AND	)	June 25, 1992
CASUALTY CO.,	)	9:30 a.m.
	)	
Defendant.	)	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE WILLIAM T. HART

APPEARANCES:

For the plaintiff: ROBERT WILSON, Pro se

For the defendant: RICK SUDEKUM

RAYMOND J. COMEAU, C.S.R.
OFFICIAL REPORTER
UNITED STATES DISTRICT COURT

HArrison 7-1305
VErnon 5-0136

219 South Dearborn Street
Chicago, Illinois 60604

THE CLERK: 92 C 1770, Robert Wilson v. State Farm Fire and Casualty Company, for ruling.

THE COURT: Good morning.

MR. SUDEKUM: Good morning, your Honor. Rick Sudekum for the defendant.

MR. WILSON: Good morning, your Honor. Robert Wilson, plaintiff.

THE COURT: I am going to file an order and a memorandum opinion today in which I grant the motion to dismiss.

Are you appearing here without an attorney, Mr. Wilson?

MR. WILSON: Yes, I am, your Honor.

THE COURT: All right, then I am going to advise you that you have 30 days in which to appeal this order to the United States Court of Appeals for the 7th Circuit by filing a notice of appeal with the clerk of this court. We will include

that admonition as well in the minute order we issue today.

I also want to tell you, Mr. Wilson, that if the Court of Appeals thinks your appeal is frivolous, they may impose sanctions. Now, you had better take a careful look at my order and abide accordingly.

All right, Mr. Clerk, you may distribute copies to Mr. Wilson and to counsel.

Thank you.

MR. SUDEKUM: Thank you, your Honor.

CERTIFICATE

I certify that the foregoing is a correct transcript of the record of proceedings in this case on June 25, 1992.

_____ _____

Official Court Reporter Date

APPENDIX I

RENTAL DWELLING POLICY - BASIC FORM 1

Coverage afforded by this policy is provided by

STATE FARM GENERAL INSURANCE COMPANY

2309 E. OAKLAND AVE., BLOOMINGTON, ILLINOIS 61709

a Stock Company with Home Offices in Bloomington, IL

DECLARATIONS

We will provide the insurance described in this policy in return for the premium and compliance with all appliable provisions of this policy.

POLICY NUMBER: 93-72-0109-2

REPLACES NUMBER: 13-77 0762-7

Named Insured and Mailing Address

Wilson, Robert F.

15630 Loomis, Harvey, IL 60426

THE POLICY PERIOD BEGINS AND ENDS AT 12:01

G1

A.M. STANDARD TIME AT THE RESIDENCE PREMISES

09/20/83 :EFFECTIVE DATE

12 MONTHS :POLICY PERIOD

09/20/84 :EXPIRATION OF POLICY PERIOD

INFLATION COVERAGE INDEX: 300.3

AUTOMATIC RENEWAL - If the Policy Period is shown as 12 months, this policy will be renewed automatically subject to the premiums, rules and forms in effect for each succeeding policy period. If this policy is terminated, we will give you and the Mortgagee/Lienholder written notice in compliance with the policy provisions or as required by law.

LOCATION OF PREMISES

15420 Vine, Harvey, Illinois 60426

LIMITS OF LIABILITY

PROPERTY AND COVERAGES

SECTION I

$40,000	A	DWELLING

$ 2,000 B PERSONAL PROPERTY

$ ACTUAL LOSS SUSTAINED

C LOSS OF RENTS

SECTION II

$100,000 L BUSINESS LIABILITY (EACH OCCURRENCE)

$ 1,000 M PREMISES MEDICAL PAYMENTS (EACH PERSON)

FORMS, OPTIONS & ENDORSEMENTS

FP-8111.2 BASIC FORM

FE-8213 AMENDATORY END

DEDUCTIBLES - SECTION I

$ 250 ALL - PERILS

IN CASE OF LOSS UNDER THIS POLICY, WE COVER ONLY THAT PART OF THE LOSS OVER THE DEDUCTIBLE STATED.

RENTAL DWELLING POLICY - BASIC FORM 1

Coverage afforded by this policy is provided by

STATE FARM GENERAL INSURANCE COMPANY

2309 E. OAKLAND AVE., BLOOMINGTON, ILLINOIS 61709

a Stock Company with Home Offices in Bloomington, IL

DECLARATIONS

We will provide the insurance described in this policy in return for the premium and compliance with all appliable provisions of this policy.

POLICY NUMBER: 93-72-0109-2

REPLACES NUMBER: 13-77 0762-7

Named Insured and Mailing Address

Wilson, Robert F.,

15630 Loomis

Harvey, IL 60426

THE POLICY PERIOD BEGINS AND ENDS AT 12:01

A.M. STANDARD TIME AT THE RESIDENCE PREMISES

02/07/83 :EFFECTIVE DATE

12 MONTHS :POLICY PERIOD

02/07/84 :EXPIRATION OF POLICY PERIOD

INFLATION COVERAGE INDEX: 300.3

AUTOMATIC RENEWAL - If the Policy Period is shown as 12 months, this policy will be renewed automatically subject to the premiums, rules and forms in effect for each succeeding policy period. If this policy is terminated, we will give you and the Mortgagee/Lienholder written notice in compliance with the policy provisions or as required by law.

LOCATION OF PREMISES

15420 Vine,

Harvey, Illinois 60426

LIMITS OF LIABILITY

PROPERTY AND COVERAGES

SECTION I

$38,300	A	DWELLING
$ 1,915	B	PERSONAL PROPERTY
$ ACTUAL LOSS SUSTAINED	C	LOSS OF RENTS

SECTION II

$100,000	L	BUSINESS LIABILITY (EACH OCCURRENCE)
$ 1,000	M	PREMISES MEDICAL PAYMENTS (EACH PERSON)

FORMS, OPTIONS & ENDORSEMENTS

FP-8111.1 BASIC FORM

FE8213 AMENDATORY ENDORSEMENT

DEDUCTIBLES - SECTION I

$ 100 ALL - PERIL

MORTGAGEE: DAVIS, FRED E. & ALICE
P.O. BOX 277
BABSON PARK, FL 33827

IN CASE OF LOSS UNDER THIS POLICY, WE COVER ONLY THAT PART OF THE LOSS OVER THE DEDUCTIBLE STATED.

TOTAL PREMIUM

$163.00

MTG LN #

33714

CREDITS APPLIED

NONE

COUNTERSIGNED January 4, 1983

by Kenneth H. Burke (agent)

APPENDIX I

PAGE OF EXAMINATION OF PETITIONER UNDER OATH BY THE RESPONDENT

Q: Do you have a letter making the claim?

A: No, I didn't make no claim. I called the insurance adjuster, and they sent [Walter] Churan out.

* * * *

Q: Okay. So you first made claim in November or December of '83; am I understanding this correctly? Your claim was denied — I think we went through this before. *Your claim was denied on January 5, 1984?*

A: *Right.*

Q: *And that was for the June 27th, 1983 loss?*

A: *Correct.* (R.C220).

* * * *

Q: So actually you are making — just so I understand it — this proof, marked as exhibit 15, you prepared